

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Martha Rayner,
International Justice Clinic,
Lincoln Square Legal Services,
Fordham University School of Law
Plaintiff

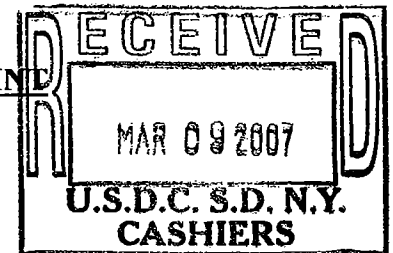
v.

UNITED STATES
DEPARTMENT OF DEFENSE
Defendant.

JUDGE RAKOFF

07 CV 2030
No.

COMPLAIN



PRELIMINARY STATEMENT

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552 *et seq.*, seeking an order requiring the Defendant, Department of Defense ("DoD") and its components, to immediately produce records requested by the Plaintiff.
2. On January 30, 2007, Plaintiff submitted its initial FOIA request ("the Request") to the Defendants. See Attachment A.
3. The Request sought records pertaining to Plaintiff's clients who are imprisoned at Guantánamo Bay Naval Station by the United States Military. Specifically, Plaintiff requested documents and records pertaining to,

relating to or mentioning Mr. Sanad Yislam al-Kazimi, Mr. Fahd Muhammed Abdullah al-Fouzan, and Mr. Mohammad al-Rahman al-Shumrani (“clients”). The Request also sought records connected to Mr. Abd al-Rahim al-Nashiri and Mr. Zayn al-‘Abidin Abu Zubaydah as they relate to Plaintiff’s clients. Such records should include health, interrogation, and discipline logs as well as records from Combatant Status Review Tribunal and Administrative Review Board proceedings.

4. Defendant has failed to respond to both the Request and Plaintiff’s request for expedited processing.
5. To enforce the Plaintiff’s right to access public information, Plaintiff seeks an order requiring Defendants to immediately process the Request and to release all records that have been unlawfully withheld.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action and these parties pursuant to 5 U.S.C. §§ 522(a)(4)(B) and 522 (a)(6)(E)(iii). Venue is proper pursuant to 5 U.S.C. § 552 (a)(4)(A) and (B).

THE PARTIES

7. Plaintiff, International Justice Clinic of Lincoln Square Legal Services is a non-profit legal firm associated with Fordham University School of Law,

located at 33 West 60th Street, New York, New York 10023. Plaintiff has its principle place of business in this judicial district. Plaintiff Martha Rayner resides and has her principle place of business in this judicial district. She is an attorney licensed to practice law in the state of New York and is a clinical professor at Fordham University School of Law, located at 33 West 60th Street, New York, New York, 10023.

8. Defendant DOD is a Department of the executive branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552 (f)(1).

FACTS

9. Plaintiff represents Mr. Sanad Yislam al-Kazimi, Mr. Fahd Muhammed Abdullah al-Fouzan, and Mr. Mohammad al-Rahman al-Shimrani (“clients”) in pending petitions for Writs of Habeas Corpus challenging the factual and legal basis for indefinite imprisonment by the U.S. Military. The habeas petitions have been stayed for over a year pending appellate litigation. Thus, Plaintiff’s clients have been unable to secure a habeas hearing on the merits of their petitions.
10. Mr. Sanad Yislam al-Kazimi was first deprived of his freedom in the United Arab Emirates in 2003, where he was tortured. He was then transferred to

Afghanistan where he continued to endure torture while being in official US custody. He has been imprisoned at Guantánamo since the Fall of 2004.

11. Mr. Fahd Muhammed Abdullah al-Fouzan has been imprisoned under harsh conditions at Guantánamo by the United States Military for over 5 years.

12. Mr. Mohammad al-Rahman al-Shimrani has been imprisoned under harsh conditions at Guantánamo by the United States Military for over 5 years.

13. As to Mr. Sanad Yislam al-Kazimi, the U.S. Military has not provided any information or documents regarding the basis for Mr. al-Kazimi's detention.

Plaintiff has only acquired a 3 page, undated document, entitled "Summarized Detainee Statement", which states several factual allegations in conclusory form. This sparse information was acquired from documents DoD was ordered to release in 2006 pursuant to a FOIA action brought by the Associated Press regarding their November 26, 2004 FOIA request.

14. As to Mr. Fahd Muhammed Abdullah al-Fouzan, the U.S. Military has not provided any information or documents regarding the basis for Mr. Al-Fouzan's detention. Plaintiff has only acquired a 3 page, undated memorandum with the subject "Unclassified Summary of Evidence for Administrative Review Board in Case of al Fouzan, Fahd Muhammed//Abdullah", which states several factual allegations in conclusory form. This information was also acquired from the information

DoD was ordered to release in 2006 pursuant to the same Associated Press FOIA action.

15. As to Mr. Mohammed al-Rahman al-Shimrani, DoD has released directly to counsel portions of a Combatant Status Review Tribunal (“CSRT”) held three years ago, in 2004. This information is now quite stale. Counsel does not have access to any further information regarding her client’s continued detention.
16. Yet, the U.S. Military has notified counsel of the opportunity to provide input regarding each client to aid the DoD in “assessing the threat your client may continue to pose to the United States and its allies.” This information will be considered by the 2007 Administrative Review Board (“ARB”). The ARB consists of a panel of three military officers who will make release, transfer or continue to detain determinations.
17. Counsel has not been told when the ARB will occur, has not been informed of the current basis for detention, is prohibited from being present at the ARB, will not be informed of the outcome of the ARB, and the DoD will not provide any information about substantive or procedural issues regarding any client’s past ARBs.

18. According to the DoD, the ARB occurs annually and is the only mechanism for a detainee's status review and thus, the only mechanism for release from Guantánamo.
19. In an effort to prepare some semblance of a meaningful submission to the ARB, Plaintiff requested, pursuant to FOIA, DoD records regarding her clients. The Request was made on January 30, 2007. The Request was submitted in accordance with DOD procedures via DOD's online form. An original signed copy of the Request was simultaneously shipped overnight. See Attachment A.
20. On January 30, 2007, Defendant sent Plaintiff confirmation that the Request had been received and would be date-stamped "received" the following day. See Attachment B.
21. Plaintiff requested documents and records pertaining to, relating to or mentioning Mr. Sanad Yislam al-Kazimi, Mr. Fahd Muhammed Abdullah al-Fouzan, and Mr. Mohammad al-Rahman al-Shumrani. The Request also sought records pertaining to Mr. Abd al-Rahim al-Nashiri and Mr. Zayn al-'Abidin Abu Zubaydah as they relate to Plaintiff's clients. Such records should include health, interrogation, and discipline logs, as well as, records and exhibits from CSRT and ARB proceedings.

22. The DoD requires that in order to ensure that counsel submissions are considered by the ARB during the 2007 review, the submission must be received by February 23, 2007. Thus, Plaintiff requested expedited processing.
23. DoD's policy is to accept and consider all submissions received prior to an individual client's ARB. There is no way, however, to determine whether an individual ARB has taken place. Accordingly, time is of the essence.
24. The ARB is fraught with significant due process problems, but it is presently the only "process" available. Plaintiff awaits DoD's compliance under FOIA before making a submission to the ARB since Counsel's informed submission is critical. Thus, failure to produce the public records requested by Plaintiff represents "an imminent loss of substantial due process rights" for Plaintiff's clients.
25. Defendant has failed to respond to both the Request and Plaintiff's request for expedited processing. On January 30, 2007, Plaintiff received confirmation from Defendant that request had been received and would be date-stamped "received" the following day. Defendant has failed to make any other contact with Plaintiff, which constitutes a constructive denial of the request for records. In addition, Defendant's has failed to make any decision as to the request for expedited processing.

CAUSES OF ACTION

First Cause of Action:

Violation of FOIA for Failure to Release Records Sought by Plaintiff's Request

26. Plaintiff repeats and realleges the allegations in paragraphs 1 - 25 as if fully set forth herein.
27. Defendant's failure to release records sought by Plaintiff violates FOIA, 5 U.S.C. § 552 (a) by failing to "make available to the public information" in accordance with the statute and Defendant's own regulations promulgated thereunder.

Second Cause of Action:

Violation of FOIA for Failure to Respond to timely respond to Plaintiff's Request for Expedited Processing

28. Plaintiff repeats and realleges the allegations in paragraphs 1 - 25 as if fully set forth herein.
29. Defendant's failure to respond in a timely manner to Plaintiff's request for expedited processing violates FOIA, 5 U.S.C. 522 (a)(6)(E)(ii)(I), and Defendant's own regulations promulgated thereunder, by failing to determine whether to provide expedited processing "within 10 days after the date of the request".

Third Cause of Action:

Violation of FOIA for Failure to Make Promptly Available the Records Sought by Plaintiff's Request

30. Plaintiff repeats and realleges the allegations in paragraphs 1 -25 as if fully set forth herein.

31. Defendant's failure to make promptly available and to release in timely fashion the documents requested by Plaintiff violates FOIA, 5 U.S.C. § 551 (a)(3)(A) by failing to make "the records promptly available to any person".

Fourth Cause of Action:
Violation of FOIA for Failure to Timely Respond to Plaintiff's Requests

32. Plaintiff repeats and realleges the allegations in paragraphs 1 - 25 as if fully set forth herein.

33. Defendant's failure to timely respond to the Request violates FOIA, 5 U.S.C. § 552 (a)(6)(A)(i), and Defendant's own regulations promulgated thereunder, by failing to "determine within 20 days (except Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making the request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination;".

REQUESTED RELIEF

WHEREFORE, Plaintiff prays that this Court:

- a) Order Defendant to immediately and expeditiously process Plaintiff's FOIA request of January 30, 2007, and to disclose the records requested;
- b) Expedite this proceeding as provided for in 28 U.S.C. § 1657;
- c) Set a schedule for producing requested records to Plaintiff;
- d) Award Plaintiff costs incurred in this action; and
- e) Grant such other relief as the Court may deem just and proper.

Dated: New York, NY
March 9, 2007

Respectfully submitted,

Martha Rayner (NY-1423)
Ramzi Kassem (NY-3567)
Counsel for Plaintiff
International Justice Clinic
Lincoln Square Legal Services
Fordham University School of Law
33 W. 60th Street, 3rd Floor
New York, NY 10023
Telephone: (212) 636-6934
Facsimile: (212) 636-6923

By: _____

Martha Rayner

Attachment A

LINCOLN SQUARE LEGAL SERVICES, INC.

Executive Director
Ian Weinstein

Supervising Attorneys
Cheryl G. Bader
James A. Cohen
Elizabeth B. Cooper
Romaine L. Gardner
Brian Glick
Leah A. Hill
Elizabeth A. Maresca

Supervising Attorneys
Michael W. Martin
Martha Rayner
Beth G. Schwartz
Marcella Silverman
Gemma Solimene

Supervising Social Worker
Lyn Kennedy Slater, C.S.W.

January 30, 2007

Office of Freedom of Information and Security Review
1155 Defense Pentagon
Washington, DC 20301-1155

Re: Freedom of Information Act (FOIA) Request

To Whom It May Concern,

This letter constitutes a request for records pursuant to the Freedom of Information Act ("FOIA"). 5 U.S.C. §552 *et seq.* and corresponding regulations. This request is submitted by The International Justice Clinic, Lincoln Center Legal Services, ("Requester"), part of the Clinical Program of Fordham University School of Law, a non-profit legal and educational institution. Accordingly, the undersigned seek records pertaining to, relating to or mentioning the following individuals currently incarcerated at Guantanamo Naval Base, Cuba ("Guantanamo"), as delineated below.

A. Individuals and Requested Information

I. Sanad Yislam al-Kazimi, ISN 1453

- (a) Combat Status Review Tribunal documents concerning the individual assigned to ISN 1453 including but not limited to exhibits and other documentation relating to or justifying the individual's designation as an Enemy Combatant. Such documents are to include the following:
 - i. Memorandum from Director, Combat Status Review Tribunal (CSRT), Regarding Review of CSRT for ISN 1453.
 - ii. Memorandum from Assistant Legal Advisor Regarding Legal Sufficiency Review of CSRT for ISN 1453.

- (d) Records concerning or relating to the transfer of custody of the individual assigned to ISN 1453 from the United Arab Emirates to the United States in 2003.
- (e) All disciplinary records pertaining to the individual assigned to ISN 1453 while in United States Custody. Such records are to include, without limitation, the following:
 - i. Records of Immediate Reaction Force (IRF) (a.k.a. Emergency Reaction Force) incidents involving ISN 1453, including, in particular, video tapes of IRF interventions.
- (f) All medical records concerning or relating the individual assigned to ISN 1453 while in United States Custody.

II. Fahd Muhammed Abdullah al-Fouzan, ISN 218

- (a) Combat Status Review Tribunal documents concerning the individual assigned to ISN 218 including but not limited to exhibits and other documentation relating to or justifying the individual's designation as an Enemy Combatant. Such documents are to include the following:
 - i. Memorandum from Director, Combat Status Review Tribunal (CSRT), Regarding Review of CSRT for ISN 218.
 - ii. Memorandum from Assistant Legal Advisor Regarding Legal Sufficiency Review of CSRT for ISN 218.
 - iii. Memorandum from Director, CSRT, Regarding Convening Authority Appointment of CSRT for ISN 218.
 - iv. Memorandum from the Office of the Administrative Review of the Detention of Enemy Combatants (OARDEC) Forward Commander, Regarding CSRT Record of Proceeding for ISN 218.
 - v. Cover Sheet by CSRT President, Regarding the Tribunal's Decision for ISN 218.
 - vi. Summary of Basis for Tribunal's Decision for ISN 218 (whether classified or unclassified), signed by CSRT President.
 - vii. Summarized Transcript of ISN 218's Statement to the CSRT, Certified by CSRT President (if applicable).
 - viii. All exhibits submitted before the CSRT for ISN 218.

- ix. Such other documentation that falls within the spirit of this request.
- (b) Administrative Review Board (ARB) documents concerning the individual assigned to ISN 218, including but not limited to the following:
- i. Testimony of the individual assigned to ISN 218 before all Administrative Review Boards thus far held, both in transcript and audio tape format.
 - ii. Detention/Release Factors pursuant to all Administrative Review Boards thus far held.
 - iii. All exhibits submitted before all Administrative Review Boards thus far held.
- (c) Records of interrogations of the individual assigned to ISN 218 while in United States custody, including but not limited to that individual's statements and responses during such interrogations, whether in transcript, video, audio or other format.
- (d) All disciplinary records pertaining to the individual assigned to ISN 218 while in United States Custody. Such records are to include, without limitation, the following:
- i. Records of Immediate Reaction Force (IRF) (a.k.a. Emergency Reaction Force) incidents involving ISN 218, including, in particular, video tapes of IRF interventions.
- (e) All medical records concerning or relating the individual assigned to ISN 218 while in United States Custody.

III. Mohammad al-Rahman al-Shumrani, ISN 195

- (a) Administrative Review Board (ARB) documents concerning the individual assigned to ISN 195, including but not limited to the following:
- i. Testimony of the individual assigned to ISN 195 before all Administrative Review Boards thus far held, both in transcript and audio tape format.
 - ii. Detention/Release Factors pursuant to all Administrative Review Boards thus far held.
 - iii. All exhibits submitted before all Administrative Review Boards thus far held.

- (b) Records of interrogations of the individual assigned to ISN 195 while in United States custody, specifically including but not limited to the following:
 - i. Records of ISN 195's statements and responses during such interrogations, whether in transcript, video, audio or other format.
 - ii. Records containing information provided by or derived from the individual assigned to ISN 195 in any way relating or referring to Zayn al-'Abidin Abu Zubaydah (a.k.a. Hani, or Tariq), whether in transcript, video, audio or other format.
- (c) All disciplinary records pertaining to the individual assigned to ISN 195 while in United States Custody. Such records are to include, without limitation, the following:
 - i. Records of Immediate Reaction Force (IRF) (a.k.a. Emergency Reaction Force) incidents involving ISN 195, including, in particular, video tapes of IRF interventions.
- (d) All medical records concerning or relating the individual assigned to ISN 195 while in United States Custody.

IV. Abd al-Rahim al-Nashiri (a.k.a. Abd al-Rahim Hussein Muhammad Abdu, Mullah Bilal, Bilal, Abu Bilal al-Makki, Khalid al-Safani, or Amm Ahmad)

- (a) All DoD documents concerning Abd al-Rahim al-Nashiri including but not limited to the following:
 - i. Combat Status Review Tribunal documents (if applicable) such as exhibits submitted before the CSRT, and other documentation relating to or justifying this individual's status as an Enemy Combatant.
 - ii. Records containing information provided by or derived from Abd al-Rahim al-Nashiri in any way relating or referring to the individual assigned to ISN 1453, whether in transcript, video, audio or other format.

V. Zayn al-'Abidin Abu Zubaydah (a.k.a. Hani, or Tariq)

- (a) All DoD documents concerning Zayn al-'Abidin Abu Zubaydah, including but not limited to the following:

- iii. Memorandum from Director, CSRT, Regarding Convening Authority Appointment of CSRT for ISN 1453.
 - iv. Memorandum from the Office of the Administrative Review of the Detention of Enemy Combatants (OARDEC) Forward Commander, Regarding CSRT Record of Proceeding for ISN 1453.
 - v. Cover Sheet by CSRT President, Regarding the Tribunal's Decision for ISN 1453.
 - vi. Summary of Basis for Tribunal's Decision for ISN 1453 (whether classified or unclassified), signed by CSRT President.
 - vii. Summarized Transcript of ISN 1453's Statement to the CSRT, Certified by CSRT President (if applicable).
 - viii. All exhibits submitted before the CSRT for ISN 1453.
 - ix. Such other documentation that falls within the spirit of this request.
- (b) Administrative Review Board (ARB) documents concerning the individual assigned to ISN 1453, including but not limited to the following:
- i. Testimony of the individual assigned to ISN 1453 before all Administrative Review Boards thus far held, both in transcript and audio tape format.
 - ii. Detention/Release Factors pursuant to all Administrative Review Boards thus far held.
 - iii. All exhibits submitted before all Administrative Review Boards thus far held.
 - iv. Other such documentation that falls within the spirit of this request.
- (c) Records of interrogations of the individual assigned to ISN 1453 while in United States custody, specifically including but not limited to the following:
- i. Records of ISN 1453's statements and responses during such interrogations, whether in transcript, video, audio or other format.
 - ii. Records containing information provided by or derived from the individual assigned to ISN 1453 in any way relating or referring to Abd al-Rahim al-Nashiri (a.k.a. Abd al-Rahim Hussein Muhammad Abdu, Mullah Bilal, Bilal, Abu Bilal al-Makki, Khalid al-Safani, or Amm Ahmad), whether in transcript, video, audio or other format.

- i. Combat Status Review Tribunal documents (if applicable) such as exhibits submitted before the CSRT, and other documentation relating to or justifying this individual's status as an Enemy Combatant.
- ii. Records containing information provided by or derived from Zayn al-'Abidin Abu Zubaydah in any way relating or referring to the individual assigned to ISN 195, whether in transcript, video, audio or other format.

B. Expedited Processing of the above Requests is Requested

Under 32 C.F.R. §286.4(d)(3)(iv), expedited processing shall be granted in instances of "an imminent loss of substantial due process and humanitarian need." Based on the following, we believe that this requirement is met.

The undersigned is security-cleared counsel for the three individuals identified above through sections A(I)–(III). Pursuant to Administrative Review Board (ARB) procedure, we have been invited by the Office of the Administrative Review of the Detention of Enemy Combatants (OARDEC) to submit documentation on behalf of our clients. The deadline for such submission is February 23, 2007. Since our clients remain uncharged with any crime, and are unlikely to be charged at any time, the ARB presently is their sole opportunity to be heard.

Further, it is also our only opportunity, as counsel, to have any say in the evaluation process. The worth of any submission made without access to records requested above would be severely compromised, and would have little determinative impact on the outcome of any Administrative Review Board. This represents "an imminent loss of substantial due process rights." Indeed, it is difficult, if not impossible, to see how due process can be complied with where counsel is denied access to records required for effective representation of his or her client before an Administrative Review Board. The gross inadequacy of documents that have thus far been released pursuant to the Associated Press FOIA request necessitates this more specific request on behalf of our clients.

In addition, continued and indefinite detention by virtue of the fact that counsel is unable to access the above requested records clearly indicates that there is a humanitarian need to make this information available, for it is in the interest and welfare of mankind to ensure that individuals, whether United States citizens or not, are not detained indefinitely and without charge any longer than the United States deems necessary. Release of the records requested will substantially promote such welfare and interest.

Finally, it is in the interests of the United States to ensure that individuals are not detained any longer than is necessary. We have been invited to participate in the upcoming round of ARBs and request nothing more than to be provided with the tools necessary for meaningful participation in that process. As such we urge you to process these requests in time for the February 23, 2007 submission deadline.

C. Fees

As a non-profit educational and legal institution we have limited financial resources at our disposal. As such, we request that you provide an estimation of the fees involved prior to commencing processing of this FOIA request. Additionally, in an effort to reduce costs, we are prepared to review these records prior to duplication.

D. Exempt Information

FOIA and DoD implementing regulations provide that if certain portions of requested records are exempt from mandatory disclosure, then non-exempt materials shall be disclosed after the exempt material has been deleted. *See* 5 U.S.C. § 552(b); 32 C.F.R. §286.23(d). As such, if you determine that certain parts of the requested records that pertains to this request is exempt, please provide a copy of the remainder of the record. Additionally, if you determine that some or all of the requested records are exempt from disclosure, please provide a list or index of the records withheld, the exemption invoked, an estimation of the volume of records denied, and the reasons why a discretionary release of the records would not be appropriate under DoD implementing regulations and the agency's FOIA policy. *See* 32 C.F.R. §286.23(e).

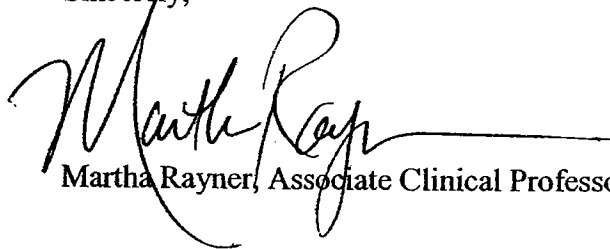
* * * *

Please direct all future responses to my attention at:

Martha Rayner, Associate Clinical Professor of Law,
Lincoln Center Legal Services,
International Justice Clinic,
Fordham Law School,
33 West 60th Street, 3rd Floor,
New York, NY 10023.
Telephone: 212-636-6941.
Facsimile: 212-636-6923.

Please contact me at the telephone number above if it necessary to discuss any aspect of this request. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Martha Rayner', with a long horizontal line extending to the right.

Martha Rayner, Associate Clinical Professor of Law

LINCOLN SQUARE LEGAL SERVICES, INC.

Executive Director
Ian Weinstein

Supervising Attorneys
Cheryl G. Bader
James A. Cohen
Elizabeth B. Cooper
Romaine L. Gardner
Brian Glick
Leah A. Hill
Elizabeth A. Maresca

Supervising Attorneys
Michael W. Martin
Martha Rayner
Beth G. Schwartz
Marcella Silverman
Gemma Solimene

Supervising Social Worker
Lyn Kennedy Slater, C.S.W.

DECLARATION OF MARTHA RAYNER IN SUPPORT OF REQUEST FOR EXPEDITED PROCESSING

I, Martha Rayner, declare, pursuant to 5 U.S.C. §552 and pursuant to 32 C.F.R.

§286.4(d)(3)(iv):

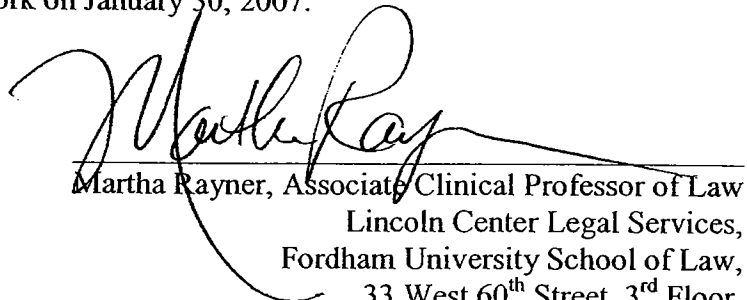
1. I am an Associate Clinical Professor of Law at Fordham University School of Law, 33 West 60th Street, 3rd Floor, New York, NY 10023. I submit this declaration in support of the FOIA application filed today by Lincoln Center Legal Services (Requester).
2. I currently represent the individuals to whom this FOIA request pertains, namely Sanad Yislam al-Kazimi (ISN 1453), Fahd Muhammed Abdullah al-Fouzan (ISN 218) and Mohammad al-Rahman al-Shumrani (ISN 195) in a *Habeas Corpus* case filed in Federal District Court wherein the continued detention of these individuals, among others, in Guantanamo Naval Base, Cuba ("Guantanamo") is challenged as unlawful and unconstitutional.
3. The United States has denied substantially, and continues to deny substantially, our client's due process rights. These individuals have been imprisoned at Guantanamo without charge in excess of three years.
4. As counsel to these three individuals we have been invited by the Office of the Administrative Review of the Detention of Enemy Combatants (OARDEC) to submit documentation on behalf of our clients before the forthcoming Administrative Review Boards ("ARB"). The deadline for such submissions is February 23, 2007. Since our clients remain uncharged with any crime, and are unlikely to be charged at any time, the ARB presently is their only opportunity to be heard. It is also our only opportunity, as counsel, to have any say in the evaluation process. The value of any submission made without access to the records requested would be severely compromised, and would have little

determinative impact on the outcome of any Administrative Review Board. This represents "an imminent loss of substantial due process rights" for our clients.

5. Further, continued and indefinite detention by virtue of the fact counsel is unable to access the requested records, clearly indicates that there is a "humanitarian need" to make this information available, for it is in the interest and welfare of mankind to ensure that individuals, whether United States citizens or not, are not detained indefinitely and without charge any longer than the United States deems necessary. Release of the records requested will substantially promote such welfare and interest.

I hereby declare that the foregoing is true and correct to the best of my knowledge.

Executed at New York, New York on January 30, 2007.



Martha Rayner, Associate Clinical Professor of Law
Lincoln Center Legal Services,
Fordham University School of Law,
33 West 60th Street, 3rd Floor,
New York, NY 10023.
Telephone: 212-636-6941
Email: mrayner@law.fordham.edu



Jan. 30, 2007 War on Terror Transformation News Products Press Resources Images Websites

Freedom of Information Act (FOIA) Request Form

Last Upd
05:27

Service Records information **CAN NOT** be obtained through a request with this form. If you need information on Service Records, click the "BACK" button on your browser and select the "Service Records" link.

Privacy Act Statement

(Fields with an asterisk by them are necessary in order to respond to your request)

* Name (First & Last, e.g., John Doe):

* E-mail Address:

Organization:

* Address:

Additional Address:

* City:

* State:

* ZIP Code:

Country:

* Phone number:

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General I
Regulatio
Forms
Reports

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Sources

Requester Control Number (If applicable)

* Your Request:

To Whom It May Concern,

Please note that a signed copy of the below request letter and declaration have been sent via UPS Next Day Air (tracking #N4568445276) to the Office of Freedom of Information and Security Review.

This letter constitutes a request for records pursuant to the Freedom of Information Act ("FOIA"). 5 U.S.C. §552 et seq. and corresponding regulations. This request is submitted by The International Justice

* Willing to pay (\$):

Privacy Act Statement:

Authority: 5 USC 301; 5 USC 552

Principal Purpose: To obtain necessary information so that a response can be provided to your FOIA request.

Routine Use: Your request may be referred to another Federal agency if the record(s) you seek originated with that agency.

Disclosure: Voluntary: However, no reply can be given if the requested information is not furnished.

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F



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Attachment B

From: FOIA Request System <nobody@dtic.mil>
To: <MRayner@law.fordham.edu>
Date: 1/30/2007 2:19:51 PM
Subject: Freedom of Information Act Request Confirmation

*** THIS IS AN AUTOMATED MESSAGE. DO NOT REPLY. ***

This is your confirmation that we have received your FOIA request. Please note that it will be date-stamped as "received" on the next official business day.

You provided the following information:

Submitted: [30/Jan/2007:14:18:47]
Name: Martha Rayner
Organization: Lincoln Square Legal Services, Fordham University School of Law
Phone number: 212-636-6941
E-mail: MRayner@law.fordham.edu

Address 1: 33 West 60th Street, 3rd Floor
Address 2:
City: New York
State: NY
ZIP Code: 10023
Country:

Your Request:

To Whom It May Concern,

Please note that a signed copy of the below request letter and declaration have been sent via UPS Next Day Air (tracking # N4568445276) to the Office of Freedom of Information and Security Review.

This letter constitutes a request for records pursuant to the Freedom of Information Act ("FOIA"). 5 U.S.C. §552 et seq. and corresponding regulations. This request is submitted by The International Justice Clinic, Lincoln Center Legal Services, ("Requester"), part of the Clinical Program of Fordham University School of Law, a non-profit legal and educational institution. Accordingly, the undersigned seek records pertaining to, relating to or mentioning the following individuals currently incarcerated at Guantanamo Naval Base, Cuba ("Guantanamo"), as delineated below.

A. Individuals and Requested Information

I. Sanad Yislam al-Kazimi, ISN 1453

(a) Combat Status Review Tribunal documents concerning the individual assigned to ISN 1453 including but not limited to exhibits and other documentation relating to or justifying the individual's designation as an Enemy Combatant. Such documents are to include the following:

- i. Memorandum from Director, Combat Status Review Tribunal (CSRT), Regarding Review of CSRT for ISN 1453.
- ii. Memorandum from Assistant Legal Advisor Regarding Legal Sufficiency Review of CSRT for ISN 1453.
- iii. Memorandum from Director, CSRT, Regarding Convening Authority Appointment of CSRT for ISN 1453.

- iv. Memorandum from the Office of the Administrative Review of the Detention of Enemy Combatants (OARDEC) Forward Commander, Regarding CSRT Record of Proceeding for ISN 1453.
- v. Cover Sheet by CSRT President, Regarding the Tribunal's Decision for ISN 1453.
- vi. Summary of Basis for Tribunal's Decision for ISN 1453 (whether classified or unclassified), signed by CSRT President.
- vii. Summarized Transcript of ISN 1453's Statement to the CSRT, Certified by CSRT President (if applicable).
- viii. All exhibits submitted before the CSRT for ISN 1453.
- ix. Such other documentation that falls within the spirit of this request.
- (b) Administrative Review Board (ARB) documents concerning the individual assigned to ISN 1453, including but not limited to the following:
 - i. Testimony of the individual assigned to ISN 1453 before all Administrative Review Boards thus far held, both in transcript and audio tape format.
 - ii. Detention/Release Factors pursuant to all Administrative Review Boards thus far held.
 - iii. All exhibits submitted before all Administrative Review Boards thus far held.
 - iv. Other such documentation that falls within the spirit of this request.
- (c) Records of interrogations of the individual assigned to ISN 1453 while in United States custody, specifically including but not limited to the following:
 - i. Records of ISN 1453's statements and responses during such interrogations, whether in transcript, video, audio or other format.
 - ii. Records containing information provided by or derived from the individual assigned to ISN 1453 in any way relating or referring to Abd al-Rahim al-Nashiri (a.k.a. Abd al-Rahim Hussein Muhammad Abdu, Mullah Bilal, Bilal, Abu Bilal al-Makki, Khalid al-Safani, or Amm Ahmad), whether in transcript, video, audio or other format.
- (d) Records concerning or relating to the transfer of custody of the individual assigned to ISN 1453 from the United Arab Emirates to the United States in 2003.
- (e) All disciplinary records pertaining to the individual assigned to ISN 1453 while in United States Custody. Such records are to include, without limitation, the following:
 - i. Records of Immediate Reaction Force (IRF) (a.k.a. Emergency Reaction Force) incidents involving ISN 1453, including, in particular, video tapes of IRF interventions.
- (f) All medical records concerning or relating the individual assigned to ISN 1453 while in United States Custody.
- II. Fahd Muhammed Abdullah al-Fouzan, ISN 218
 - (a) Combat Status Review Tribunal documents concerning the individual assigned to ISN 218 including but not limited to exhibits and other documentation relating to or justifying the individual's designation as an Enemy Combatant. Such documents are to include the following:

- i. Memorandum from Director, Combat Status Review Tribunal (CSRT), Regarding Review of CSRT for ISN 218.
 - ii. Memorandum from Assistant Legal Advisor Regarding Legal Sufficiency Review of CSRT for ISN 218.
 - iii. Memorandum from Director, CSRT, Regarding Convening Authority Appointment of CSRT for ISN 218.
 - iv. Memorandum from the Office of the Administrative Review of the Detention of Enemy Combatants (OARDEC) Forward Commander, Regarding CSRT Record of Proceeding for ISN 218.
 - v. Cover Sheet by CSRT President, Regarding the Tribunal's Decision for ISN 218.
 - vi. Summary of Basis for Tribunal's Decision for ISN 218 (whether classified or unclassified), signed by CSRT President.
 - vii. Summarized Transcript of ISN 218's Statement to the CSRT, Certified by CSRT President (if applicable).
 - viii. All exhibits submitted before the CSRT for ISN 218.
 - ix. Such other documentation that falls within the spirit of this request.
- (b) Administrative Review Board (ARB) documents concerning the individual assigned to ISN 218, including but not limited to the following:
- i. Testimony of the individual assigned to ISN 218 before all Administrative Review Boards thus far held, both in transcript and audio tape format.
 - ii. Detention/Release Factors pursuant to all Administrative Review Boards thus far held.
 - iii. All exhibits submitted before all Administrative Review Boards thus far held.
- (c) Records of interrogations of the individual assigned to ISN 218 while in United States custody, including but not limited to that individual's statements and responses during such interrogations, whether in transcript, video, audio or other format.
- (d) All disciplinary records pertaining to the individual assigned to ISN 218 while in United States Custody. Such records are to include, without limitation, the following:
- i. Records of Immediate Reaction Force (IRF) (a.k.a. Emergency Reaction Force) incidents involving ISN 218, including, in particular, video tapes of IRF interventions.
- (e) All medical records concerning or relating the individual assigned to ISN 218 while in United States Custody.
- III. Mohammad al-Rahman al-Shumrani, ISN 195
- (a) Administrative Review Board (ARB) documents concerning the individual assigned to ISN 195, including but not limited to the following:
- i. Testimony of the individual assigned to ISN 195 before all Administrative Review Boards thus far held, both in transcript and audio tape format.
 - ii. Detention/Release Factors pursuant to all Administrative Review Boards thus far held.

- iii. All exhibits submitted before all Administrative Review Boards thus far held.
- (b) Records of interrogations of the individual assigned to ISN 195 while in United States custody, specifically including but not limited to the following:
 - i. Records of ISN 195's statements and responses during such interrogations, whether in transcript, video, audio or other format.
 - ii. Records containing information provided by or derived from the individual assigned to ISN 195 in any way relating or referring to Zayn al-'Abidin Abu Zubaydah (a.k.a. Hani, or Tariq), whether in transcript, video, audio or other format.
- (c) All disciplinary records pertaining to the individual assigned to ISN 195 while in United States Custody. Such records are to include, without limitation, the following:
 - i. Records of Immediate Reaction Force (IRF) (a.k.a. Emergency Reaction Force) incidents involving ISN 195, including, in particular, video tapes of IRF interventions.
- (d) All medical records concerning or relating the individual assigned to ISN 195 while in United States Custody.
- IV. Abd al-Rahim al-Nashiri (a.k.a. Abd al-Rahim Hussein Muhammad Abdu, Mullah Bilal, Bilal, Abu Bilal al-Makki, Khalid al-Safani, or Amm Ahmad)
 - (a) All DoD documents concerning Abd al-Rahim al-Nashiri including but not limited to the following:
 - i. Combat Status Review Tribunal documents (if applicable) such as exhibits submitted before the CSRT, and other documentation relating to or justifying this individual's status as an Enemy Combatant.
 - ii. Records containing information provided by or derived from Abd al-Rahim al-Nashiri in any way relating or referring to the individual assigned to ISN 1453, whether in transcript, video, audio or other format.
- V. Zayn al-'Abidin Abu Zubaydah (a.k.a. Hani, or Tariq)
 - (a) All DoD documents concerning Zayn al-'Abidin Abu Zubaydah, including but not limited to the following:
 - i. Combat Status Review Tribunal documents (if applicable) such as exhibits submitted before the CSRT, and other documentation relating to or justifying this individual's status as an Enemy Combatant.
 - ii. Records containing information provided by or derived from Zayn al-'Abidin Abu Zubaydah in any way relating or referring to the individual assigned to ISN 195, whether in transcript, video, audio or other format.

B. Expedited Processing of the above Requests is Requested

Under 32 C.F.R. §286.4(d)(3)(iv), expedited processing shall be granted in instances of "an imminent loss of substantial due process and humanitarian need." Based on the following, we believe that this requirement is met.

The undersigned is security-cleared counsel for the three individuals identified above through sections A(I)-(III). Pursuant to Administrative Review Board (ARB) procedure, we have been invited by the Office of the Administrative Review of the Detention of Enemy Combatants (OARDEC) to submit documentation on behalf of our clients. The deadline for such submission is February 23, 2007. Since our clients remain

uncharged with any crime, and are unlikely to be charged at any time, the ARB presently is their sole opportunity to be heard.

Further, it is also our only opportunity, as counsel, to have any say in the evaluation process. The worth of any submission made without access to records requested above would be severely compromised, and would have little determinative impact on the outcome of any Administrative Review Board. This represents "an imminent loss of substantial due process rights." Indeed, it is difficult, if not impossible, to see how due process can be complied with where counsel is denied access to records required for effective representation of his or her client before an Administrative Review Board. The gross inadequacy of documents that have thus far been released pursuant to the Associated Press FOIA request necessitates this more specific request on behalf of our clients.

In addition, continued and indefinite detention by virtue of the fact that counsel is unable to access the above requested records clearly indicates that there is a humanitarian need to make this information available, for it is in the interest and welfare of mankind to ensure that individuals, whether United States citizens or not, are not detained indefinitely and without charge any longer than the United States deems necessary. Release of the records requested will substantially promote such welfare and interest.

Finally, it is in the interests of the United States to ensure that individuals are not detained any longer than is necessary. We have been invited to participate in the upcoming round of ARBs and request nothing more than to be provided with the tools necessary for meaningful participation in that process. As such we urge you to process these requests in time for the February 23, 2007 submission deadline.

C. Fees

As a non-profit educational and legal institution we have limited financial resources at our disposal. As such, we request that you provide an estimation of the fees involved prior to commencing processing of this FOIA request. Additionally, in an effort to reduce costs, we are prepared to review these records prior to duplication.

D. Exempt Information

FOIA and DoD implementing regulations provide that if certain portions of requested records are exempt from mandatory disclosure, then non-exempt materials shall be disclosed after the exempt material has been deleted. See 5 U.S.C. § 552(b); 32 C.F.R. §286.23(d). As such, if you determine that certain parts of the requested records that pertains to this request is exempt, please provide a copy of the remainder of the record. Additionally, if you determine that some or all of the requested records are exempt from disclosure, please provide a list or index of the records withheld, the exemption invoked, an estimation of the volume of records denied, and the reasons why a discretionary release of the records would not be appropriate under DoD implementing regulations and the agency's FOIA policy. See 32 C.F.R. §286.23(e).

* * * *

Please direct all future responses to my attention at:

Martha Rayner, Associate Clinical Professor of Law,
Lincoln Center Legal Services,
International Justice Clinic, Fordham Law School,
33 West 60th Street, 3rd Floor,
New York, NY 10023.
Telephone: 212-636-6941.
Facsimile: 212-636-6923.

Please contact me at the telephone number above if it necessary to discuss any aspect of this request.
Thank you for your consideration of this matter.

Sincerely,
Martha Rayner, Associate Clinical Professor of Law

DECLARATION OF MARTHA RAYNER IN SUPPORT OF REQUEST FOR EXPEDITED PROCESSING

I, Martha Rayner, declare, pursuant to 5 U.S.C. §552 and pursuant to 32 C.F.R. §286.4(d)(3)(iv):

1. I am an Associate Clinical Professor of Law at Fordham University School of Law, 33 West 60th Street, 3rd Floor, New York, NY 10023. I submit this declaration in support of the FOIA application filed today by Lincoln Center Legal Services (Requester).
2. I currently represent the individuals to whom this FOIA request pertains, namely Sanad Yislam al-Kazimi (ISN 1453), Fahd Muhammed Abdullah al-Fouzan (ISN 218) and Mohammad al-Rahman al-Shumrani (ISN 195) in a Habeas Corpus case filed in Federal District Court wherein the continued detention of these individuals, among others, in Guantanamo Naval Base, Cuba ("Guantanamo") is challenged as unlawful and unconstitutional.
3. The United States has denied substantially, and continues to deny substantially, our client's due process rights. These individuals have been imprisoned at Guantanamo without charge in excess of three years.
4. As counsel to these three individuals we have been invited by the Office of the Administrative Review of the Detention of Enemy Combatants (OARDEC) to submit documentation on behalf of our clients before the forthcoming Administrative Review Boards ("ARB"). The deadline for such submissions is February 23, 2007. Since our clients remain uncharged with any crime, and are unlikely to be charged at any time, the ARB presently is their only opportunity to be heard. It is also our only opportunity, as counsel, to have any say in the evaluation process. The value of any submission made without access to the records requested would be severely compromised, and would have little determinative impact on the outcome of any Administrative Review Board. This represents "an imminent loss of substantial due process rights" for our clients.
5. Further, continued and indefinite detention by virtue of the fact counsel is unable to access the requested records, clearly indicates that there is a "humanitarian need" to make this information available, for it is in the interest and welfare of mankind to ensure that individuals, whether United States citizens or not, are not detained indefinitely and without charge any longer than the United States deems necessary. Release of the records requested will substantially promote such welfare and interest.

I hereby declare that the foregoing is true and correct to the best of my knowledge. Executed at New York, New York on January 30, 2007.

Martha Rayner, Associate Clinical Professor of Law
Lincoln Center Legal Services,
Fordham University School of Law,
33 West 60th Street, 3rd Floor,
New York, NY 10023.
Telephone: 212-636-6941
Email: mrayner@law.fordham.edu

Willing To Pay: \$ reasonable fees, please see above request for details

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Submitted via <http://www.dod.mil/pubs/foi/foiarequest.html>

Sender Information:

REMOTE_HOST: 65.206.60.105

REMOTE_ADDR: 65.206.60.105

Browser: Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.0; (R1 1.3))

E-mail: MRayner@law.fordham.edu